

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

ALFRED E. DIXON,
Petitioner,

v.

EDMUND G. BROWN, Jr.,
Respondent.

Case No. 17-cv-0942-NJV (PR)

ORDER OF DISMISSAL

Docket Nos. 2, 6

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a 2005 conviction in Contra Costa County, so venue is proper here. *See* 28 U.S.C. § 2241(d). Court records indicate that petitioner already filed a habeas petition in this court challenging the same conviction. *See Dixon v. Duffy*, Case No. 08-cv-3832-SBA. Petitioner's case was dismissed on the merits on February 8, 2016. This appears to be a successive petition.

"A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed . . ." 28 U.S.C. § 2244(b)(2). This is the case unless,

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

1 28 U.S.C. § 2244(b)(2).

2 “Before a second or successive application permitted by this section is filed in the district
3 court, the applicant shall move in the appropriate court of appeals for an order authorizing the
4 district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Petitioner has not
5 submitted an order from the Ninth Circuit demonstrating that he received authorization to file a
6 new petition. The case is therefore dismissed without prejudice. If petitioner obtains permission
7 from the Ninth Circuit he may refile this case.

8 **CONCLUSION**

9 1. The motion to for leave to proceed in forma pauperis (Dockets Nos. 2, 6) is

10 **GRANTED.**

11 2. The case is **DISMISSED** and a certificate of appealability is **DENIED**.

12 **IT IS SO ORDERED.**

13 Dated: March 16, 2017

14 
15 NANDOR J. VADAS
16 United States Magistrate Judge
17
18
19
20
21
22
23
24
25
26
27
28